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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,350	08/31/2001	Eddie Drake	338528007US1	1476

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SIEMENS CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER
SALTARELLI, DOMINIC D

ART UNIT	PAPER NUMBER
2623	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<table>
<tr><td rowspan="2">Office Action Summary</td><td colspan="2">Application No.</td><td>Applicant(s)</td></tr>
<tr><td colspan="2">09/945,350</td><td>DRAKE ET AL.</td></tr>
<tr><td></td><td>Examiner</td><td>Art Unit</td><td></td></tr>
<tr><td></td><td>Dominic D. Saltarelli</td><td>2623</td><td></td></tr>
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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _19 January 2007_.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-102_ is/are pending in the application.

    4a) Of the above claim(s) _1-31,34,37,40,48 and 72-102_ is/are withdrawn from consideration.

5) ☒ Claim(s) _64_ is/are allowed.

6) ☒ Claim(s) _32,33,35,36,38,39,41-47,49-63 and 65-71_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

December 20, 2006 has been entered.

Response to Arguments

2.   Applicant's arguments with respect to claims 1, 2, 4-6, 8-33, 35, 36, 38-63, and

65-71 have been considered but are moot in view of the new grounds of rejection.

Election/Restrictions

3.   Restriction to one of the following inventions is required under 35 U.S.C. 121:

I.   Claims 1, 2, 4-6, 8-31, 40, and 48, drawn to a set top box comprising a

battery backup which sends event notifications in response to a

determination that the set top box is no longer receiving AC power,

classified in class 725, subclass 151.

II.   Claims 32, 33, 35, 36, 38, 39, 41-47, and 49-71, drawn to an event

tracking server which selects advertisements based on viewer feedback,

classified in class 725, subclass 36.

The inventions are distinct, each from the other because of the following reasons:

4.   Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as remote troubleshooting of a power distribution network. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claims depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

5.   Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

6.   During a telephone conversation with Brian Johnson on March 20, 2007 a provisional election was made without traverse to prosecute the invention of Group II, claims 32, 33, 35, 36, 38, 39, 41-47, and 49-71. Affirmation of this election must be

made by applicant in replying to this Office action. Claims 1, 2, 4-6, 8-31, 40, and 48

are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being

drawn to a non-elected invention.

Claim Objections

7.   Claim 84 objected to because of the following informalities: The status identifier

should be changed from (Original) to (Withdrawn). Appropriate correction is required.

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

9.   Claims 32, 33, 35, 36, 38-47, and 49 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Brown (5,857,190, of record) in view of Lambert et al.

(6,038,601, listed in the IDS supplied by applicant May 20, 2002) [Lambert] and

Zigmond et al. (6,698,020) [Zigmond].

Regarding claims 32, 33, 43, 47, and 49, Brown discloses a method in an

event tracking server (shown as event log manager 56 in fig. 1) for monitoring

interactions between viewers of content presented on content presentation

devices and set top boxes associated with those content presentation devices

(col. 3 line 65 – col. 4 line 24), the set top boxes for assisting in presented the

content to the viewers (col. 4, lines 12-24), comprising:

receiving a plurality of event messages that are each sent from one of the

multiple set top boxes in response to an interaction with the one set top box by

viewers of a content presentation device associated with the one set top box (col.

5, lines 9-42); and

tracking audience information for the presented content based on the

received event message of the set top boxes (col. 6, lines 45-58).

Brown fails to disclose determining one or more of the set top boxes from

which an event message has not been received for a predetermined period of

time, sending a status message to each of the determined set top boxes,

determining a current status of each of the determined set top boxes, and the

event tracking server monitoring previous displays of a specified advertisement

and analyzing subsequent interaction events to determine a disapproval by

advertisement viewers of the specified advertisement, the server adapted to

change advertisement content responsive to the disapproval by advertisement

viewers.

In an analogous art, Lambert teaches a system for gathering user

statistics regarding content chosen for viewing (fig. 5) wherein accurate gathering

of usage statistics is accomplished by polling a subscriber for status information

(the server is seeking confirmation of an active client device, col. 27, lines 55-67)

when no notifications have arrived from said subscriber after a predetermined

period of time (col. 28, lines 39-59).

It would have been obvious at the time to a person of ordinary skill in the

art to modify the method disclosed by Brown to include polling a subscriber for

status information when no event messages have arrived from said subscriber

after a predetermined period of time, as taught by Lambert, for the benefit of

improved usage statistics gathering, as knowledge of the operability of a

subscriber device is highly relevant to a system attempting to track the usage

habits of subscribers.

Brown and Lambert fail to disclose the event tracking server monitoring

previous displays of a specified advertisement and analyzing subsequent

interaction events to determine a disapproval by advertisement viewers of the

specified advertisement, the server adapted to change advertisement content

responsive to the disapproval by advertisement viewers.

In an analogous art, Zigmond teaches an event tracking, advertisement

insertion system (col. 6, lines 1-12 and col. 7, lines 50-67) wherein an audience

tracker is adapted to monitor previous displays of a specified advertisement and

analyze subsequent interaction events to determine a disapproval by

advertisement viewers of the specified advertisement (the system tracks which

advertisements are viewed, and more importantly, specifically notes which

advertisements are switched away from by users, col. 9, lines 21-38), and

changes advertisement content responsive to the disapproval by advertisement

viewers ("the viewer response information remains at the ad insertion device to further modify the advertisement selection process", col. 9, lines 39-55, wherein observed viewer preferences are used in determining the selection of advertisements, col. 11, lines 13-30), for the benefit of allowing advertisers to both more effectively target advertisements and test the popularity or effectiveness of current advertisements (col. 9, lines 33-38).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Brown and Lambert to include monitoring previous displays of a specified advertisement and analyzing subsequent interaction events to determine a disapproval by advertisement viewers of the specified advertisement, and changing advertisement content responsive to the disapproval by advertisement viewers, as taught by Zigmond, for the benefit of allowing advertisers to both more effectively target advertisements and test the popularity or effectiveness of current advertisements.

Regarding claim 35, Brown, Lambert, and Zigmond disclose the method of claim 32, wherein the receiving of the plurality of event messages is in real time with respect to corresponding interactions (Brown, col. 7, lines 54-67).

Regarding claim 36, Brown, Lambert, and Zigmond disclose the method of claim 32, wherein the plurality of event messages each additionally include information related to the viewers of the content presentation device associated

with the set top box from which the event message was received (the events describe actions taken by viewers, such as key depressions made on a remote control, Brown, col. 6, lines 34-44).

Regarding claims 38 and 39, Brown, Lambert, and Zigmond disclose the method of claim 32, including presenting the digital content to the corresponding content presentation devices (content is routed through the set top box to a television, Brown, col. 4, lines 12-24).

Regarding claim 41, Brown, Lambert, and Zigmond disclose the method of claim 32, but fail to disclose the status message is sent using a reliable transmission protocol.

Reliable transmission protocols are notoriously well known in the art, as said protocols ensure that messages arrive error free at their destinations.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Brown, Lambert, and Zigmond to include utilizing a reliable transmission protocol, for the benefit of ensuring that the status messages arrive error free at their destinations.

Regarding claim 42, Brown, Lambert, and Zigmond disclose the method of claim 32, wherein the status message is a ping message (Lambert, col. 25, lines 47-55).

Regarding claim 44, Brown, Lambert, and Zigmond disclose the method of

claim 32, including requesting from the set top boxes information from viewers of

a corresponding content presentation device associated with each set to box,

and in response receiving the requested viewer information in the tracking of the

audience information (Zigmond, "requests for additional information", col. 9, lines

21-38).

Regarding claims 45 and 46, Brown, Lambert, and Zigmond disclose the

method of claim 32, wherein the digital content is sent from a content server to

the set top box in a multi-cast mode (Brown, col. 3 line 65 – col. 4 line 7) or a

single-cast mode (Brown, col. 13, lines 20-28).

10.   Claims 50-63 and 66-71, are rejected under 35 U.S.C. 103(a) as being

unpatentable over Brown in view of Rautila et al. (6,918,131, of record) [Rautila] and

Zigmond.

Regarding claims 50, 66, 67, and 71, Brown discloses a method

comprising receiving a plurality of event messages that are each sent from one of

multiple set top boxes in response to an interaction with the set top box by

viewers of a display device associated with that set top box (col. 5, lines 9-42)

and identifying from the event messages viewers to whom the digital content is

currently being presented (events include information identifying their source, see

table 1 in col. 10).

Brown fails to disclose selecting based on the identified viewers distinct

content to be presented to the multiple display devices, and the server is adapted

to monitor previous displays of a specified advertisement and analyze

subsequent interaction events to determine a disapproval by advertisement

viewers of the specified advertisement, the server adapted to change

advertisement content responsive to the disapproval by advertisement viewers.

In an analogous art, Rautila teaches a television distribution system that

provides content based upon the detected viewing of programs by viewers

(customizing information in the form of advertisements, col. 3, lines 22-30, are

provided to viewer upon detection of which program the viewer is watching, col.

col. 3, lines 42-60), providing the benefit of targeted advertising (col. 3 line 61 –

col. 4 line 6).

It would have been obvious at the time to a person of ordinary skill in the

art to modify the method disclosed by Brown to include providing content to

viewers from content providers based upon the detected viewing of programs by

viewers, as taught by Rautila, for the benefit of displaying targeted, and thus

more effective, advertising to viewers. The detected viewing of programs which

triggers the delivery of new content is indicated by the detected interactions that

are reported to the headend as described in the method taught by Brown.

Brown and Rautila fail to disclose monitoring previous displays of a specified advertisement and analyzing subsequent interaction events to determine a disapproval by advertisement viewers of the specified advertisement, and changing advertisement content responsive to the disapproval by advertisement viewers.

In an analogous art, Zigmond teaches an event tracking, advertisement insertion system (col. 6, lines 1-12 and col. 7, lines 50-67) wherein an audience tracker is adapted to monitor previous displays of a specified advertisement and analyze subsequent interaction events to determine a disapproval by advertisement viewers of the specified advertisement (the system tracks which advertisements are viewed, and more importantly, specifically notes which advertisements are switched away from by users, col. 9, lines 21-38), and changes advertisement content responsive to the disapproval by advertisement viewers ("the viewer response information remains at the ad insertion device to further modify the advertisement selection process", col. 9, lines 39-55, wherein observed viewer preferences are used in determining the selection of advertisements, col. 11, lines 13-30), for the benefit of allowing advertisers to both more effectively target advertisements and test the popularity or effectiveness of current advertisements (col. 9, lines 33-38).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Brown and Rautila to include monitoring previous displays of a specified advertisement and analyzing subsequent

interaction events to determine a disapproval by advertisement viewers of the specified advertisement, and changing advertisement content responsive to the disapproval by advertisement viewers, as taught by Zigmond, for the benefit of allowing advertisers to both more effectively target advertisements and test the popularity or effectiveness of current advertisements.

Regarding claims 51-55, and 68, Brown, Rautila, and Zigmond disclose the method of claims 50 and 67, wherein the selected content are advertisements that are selected based upon a number of viewers in a particular demographic exceeding a threshold (Rautila, col. 3 line 61 - col. 4 line 6).

Regarding claim 56, Brown, Rautila, and Zigmond disclose the method of claim 50, wherein the selected digital content is presented on the multiple display devices only temporarily (the content are advertisements).

Regarding claims 57 and 58, Brown, Rautila, and Zigmond disclose the method of claim 50, wherein the distinct digital content is selected based on a change in demographics and number of identified viewers in near real time (selection is performed periodically, Rautila, col. 3, lines 61-67).

Regarding claims 59 and 69, Brown, Rautila, and Zigmond disclose the method of claims 50 and 67, but fail to disclose the distinct content is selected based on a real time change in the viewers (including demographics).

Advertisement selection systems that select advertisements based on real time changes in viewership data are notoriously well known in the art, as said known systems provide advertisement selection that is most relevant to the current viewer base.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Brown, Rautila, and Zigmond to include selecting content based on a real time change in the viewers, providing the benefit of content selection that is always most relevant to the current viewership base.

Regarding claims 60 and 61, Brown, Rautila, and Zigmond disclose the method of claim 50, including notifying a content server to send the selected digital content to multiple display devices for presentation (Rautila, col. 3 line 61 – col. 4 line 6).

Regarding claim 62, Brown, Rautila, and Zigmond disclose the method of claim 50, wherein the distinct digital content is one of multiple different groups of content available for selection, and wherein the distinct content is selected for presentation in a manner so as to maximize revenue provided by a third party

based on the current identified viewers (groups of advertisements are selected to appeal to the audience to which they are targeted, maximizing revenue, Rautila, col. 3 line 61 – col. 4 line 6).

Regarding claim 63, Brown, Rautila, and Zigmond disclose the method of claim 50, wherein the distinct digital content is one of multiple different groups of content available for selection, and wherein the distinct content is selected for presentation in a manner so as to maximize interest in the current identified viewers in continuing to view the presentation of content (groups of advertisements are selected to appeal to the audience to which they are targeted, maximizing the interest in said content by the demographic to which they are targeted, Rautila, col. 3 line 61 – col. 4 line 6).

Regarding claim 70, Brown, Rautila, and Zigmond disclose the method of claim 67, wherein the distinct digital content is selected based on a type of one or more of the interactions that are not content control instructions (Rautila teaches displaying distinct content that is based on user interactions with regard to interaction with an application, such as a voting application, and not content control instructions, col. 4, lines 7-34).

11.   Claim 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown,

Rautila, and Zigmond as applied to claim 50 above, and further in view of Klosterman et

al. (6,469,753, of record) [Klosterman].

Regarding claim 65, Brown, Rautila, and Zigmond disclose the method of

claim 50, wherein the distinct content is one of multiple different groups of

content available for selection (different groups of advertisements are available

for different demographic groups, Rautila, col. 3 line 61 – col. 4 line 6), but fail to

disclose the distinct content is selected for presentation in a manner so as to

maximize interest in viewers to whom other content is being presented to select

the distinct content for viewing.

In an analogous art, Klosterman teaches a system which inserts

advertisements for display to viewers which maximize interest in viewers to

whom other content is being presented to select the distinct content for viewing

(the advertisements are for alternative content shown on another channel,

encouraging users to tune to said alternative channel, col. 6 line 47 - col. 7 line

5), providing the benefit of allowing broadcasters to promote particular preferred

programming over other programming a user may otherwise be watching (col. 7,

lines 1-5).

It would have been obvious at the time to a person of ordinary skill in the

art to modify the method disclosed by Brown, Rautila, and Zigmond to include

distinct content is selected for presentation in a manner so as to maximize

interest in viewers to whom other content is being presented to select the distinct

content for viewing, as taught by Klosterman, for the benefit of allowing

broadcasters to promote particular preferred programming over other

programming a user may otherwise be watching.

Allowable Subject Matter

12.   Claim 64 is allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Dominic D. Saltarelli whose telephone number is (571)

272-7302. The examiner can normally be reached on Monday - Friday 9:00am -

6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

DS

SCOTT E. BELIVEAU
PRIMARY PATENT EXAMINER